IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1470 OF 2004

Bora Transport Company ...Petitioner.
Versus
Shri.Harshadkumar Nanchand
Shah & Anr. ...Respondents.

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WITH
CRIMINAL WRIT PETITION NO.1471 OF 2004

Bora Transport Company ...Petitioner.
Versus
Shri Ajaykumar Nanchand Shah
and Anr. ...Respondents.

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WITH
CRIMINAL WRIT PETITION NO.1472 OF 2004

Bora Transport Company ...Petitioner.
Versus
Shri Harshadkumar Nanchand Shah
and Anr. ...Respondents.

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Mr.Madhav Jamdar, Advocate for the Petitioner.
Mr.N.R.Bubna, Advocate for Respondent No.1.
Mr.S.V.More, APP, for Respondent No.2-State
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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : AUGUST 16, 2006.

P.C.:
1. Heard Mr.Jamdar learned Counsel for the Petitioner, Mr.Bubna learned Counsel for Respondent No.1-original complainant and Mr.More

learned APP for Respondent No.2-State.

2. The petitioner is facing prosecution under Section 138 of the Negotiable Instruments Act in SCC No.54 of 2002, SCC No.52 of 2002 and SCC No.53 of 2002 pending before the learned J.M.F.C., Court No.1, Pune. In the said three cases, process came to be issued against the petitioner under Section 138 of the N.I.Act. The petitioner had preferred applications before the leanred Magistrate stating therein that notice was issued on the 16th day and hence the process issued against the petitioner should be recalled. The said applications came to be rejected by the learned Magistrate by order dated 16.12.2003.

3. Being aggrieved by the said orders, the petitioner preferred Revisions before the Sessions Court at Pune. By order dated 21.4.2004 revisions came to be dismissed by the Sessions Judge, Pune.

4. Being aggrieved by the orders passed by the learned Magistrate as well as learned Sessions Judge, these Writ Petition have been preferred.

5. Mr.Jamdar submitted that in the present case, the complainant admittedly received the intimation regarding dishonour of cheque on 22.11.2001 and a notice was admittedly sent on 7.12.2001. Thus, Mr.Jamdar submitted that notice was issued on the 16th day. It is further pointed out that as per Section 138(b) of the N.I.Act, notice has to be issued within 15 days of the receipt of information by the complainant from the bank regarding return of cheque as un-paid. He has submitted that as the intimation was received on 22.11.2001 the 15th day according to him is 6.12.2001. Hence, notice being issued on 7.12.2001 would be beyond the prescribed period as provided in Section 138(b) of the N.I.Act.

6. Mr.Jamdar has placed reliance on a decision of a learned Single Judge of the Delhi High Court in the case of **S.V.Muthye Vs. State** reported in **2002 CRI.L.J. 3219**. Mr.Jamdar has placed reliance on the observations in the said judgment, wherein it is observed that if notice is issued beyond the period of 15 days, it is illegal and such delay cannot be legally condoned by applying either Section 473 of Cr.P.C. or Section 5 of

Limitation Act.

7. On the other hand, Mr.Bubna learned Counsel for Respondent No.1-orig.complainant relied on a decision in the case of **Harsukhlal Laxmanbhai Vagodia & Anr. Vs. State of Gujarat & Anr.**, reported in **2000 All MR (Cri) Journal 81**, wherein it is observed that while computing the 15 days period for issuing a notice, the day on which the information of dishonour of cheque is received from the Bank has to be excluded in view of Section 9 of the General Clauses Act, 1897. Hence, if the period of limitation for issuing notice is computed keeping the above judgment in view, it is seen that in the present case the notice is within the prescribed period. In such case, the decision in the case of **S.V.Muthye (supra)** is not applicable, as the calculations in the present case show that the notice is issued within 15 days as contemplated by Act.

8. Thereafter, Mr.Jamdar placed reliance on the decision of the Apex Court in the case of **M/s. SIL Import, USA Vs. M/s. Exim Aides Silk Exporters, Bangalore**, reported in **1999 CRI.L.J.**

2276. I have perused the said decision. It is noticed that the said decision is in respect of limitation in filing a complaint in a case under Section 138 of the N.I.Act. The facts therein are different. The same issue as in the present case was not before the Supreme Court. Hence, the said decision would not apply to the facts of the present case.

9. I have perused the orders of learned Magistrate as well as learned Sessions Judge. The said orders are just, legal and proper. Hence, no interference is called for. Writ Petitions are rejected.

10. At this stage, Mr.Jamdar learned Counsel for the petitioner states that he wishes to challenge this order before the Apex Court and hence prays that stay granted earlier by this Court be continued for some time to enable him to approach the Apex Court. The said prayer is reasonable. Hence stay granted by this Court earlier to the proceedings before the trial Court is extended for a further period of eight weeks from today.

(SMT.V.K.TAHILRAMANI,J.)